

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

**PROPOSED REVISIONS TO THE)
PRICE REGULATION AND)
LOCAL COMPETITION PLANS)**

DOCKET 28590



COMMENTS ON THE REVISED ATRP

On behalf of Alabama consumers, the Attorney General submits the following comments on the proposed revisions to the Alabama Telecommunications Regulation Plan (hereinafter the "ATRP") adopted by the Commission on July 25, 2004:

The revised ATRP, attached as Appendix A to the November 5, 2004 order of the Public Service Commission in Docket 28590 (hereinafter the "Revised ATRP"), does not outline, highlight, or redline the proposed revisions to the ATRP. Since it is very difficult to find the specific revisions in such a lengthy document, our comments will focus on the general concepts included in the latest revision of the ATRP.

BELLSOUTH PRICE FLEXIBILITY PLAN

1. The Attorney General supports Part I, BellSouth Price Flexibility Plan, of the Revised ATRP. Most of the changes proposed by the staff will protect consumers and allow BellSouth to compete effectively in a market where consumers want to purchase communications services, not just purchase regulated wire line telephone service.

2. On behalf of BellSouth's retail consumers, we respectfully request that the Commission modify or delete the language in paragraph 7 of the pricing rules that allows BellSouth to request and the Commission to grant price adjustments based on the rates

consumers are paying in other states. The staff has recommended that BellSouth may request rate increases for Non-discretionary Retail Communications Services and that “the Commission **will** take into account prices for the same or equivalent services in states within BellSouth’s operating area.” Revised ATRP, Appendix A, ¶ 7B(2) (emphasis added). Use of the term “will” creates a mandatory obligation in a legal document. There is no justification for using a mandatory term in this context. Furthermore, there is simply no reason for the Commission to take account of the rates in other states in setting an appropriate rate for Alabama consumers.

3. The staff goes even further in paragraph 7B(3) of the pricing rules and allows BellSouth to adjust its rates for Residential Call Waiting, Caller I.D. and Caller I.D. Deluxe upon approval of the plan. The staff allows BellSouth to pick any state and increase its Alabama rates “to mirror existing prices in any one of the states within BellSouth’s operating area.” Revised ATRP, Appendix A, ¶ 7B(3). The Commission has a responsibility to set rates in Alabama. The PSC staff should not agree to use other states’ rates as a basis for setting rates in Alabama. We do not have any information on the history or development of BellSouth’s rates in other states. There is simply no reasonable basis for the Commission to approve this part of the staff proposal.

4. Throughout this comment process, the Attorney General has objected to the staff proposal allowing percentages of rate increases of up to 25% annually because the staff has not offered any explanation or support, economic or otherwise, for the particular percentages. For example, the staff provides in the Revised ATRP for progressive rate increases for retail communications services in Tiers II and III over the next five years. Revised ATRP, Appendix A, ¶ 7B(4). A Tier II service priced at \$10.00

today could increase by 15% for the first two years, (\$10.50 to \$12.08) and, then the service could increase by 20% for the next two years, (\$14.50 to \$17.40). Finally, in the fifth year, the staff proposes that increases be limited to 25% annually, resulting in an increase of \$4.35 for the first year of the 25% increases. A Tier II service that costs \$10.00 before the ATRP could cost \$21.75 at the end of five years, if the staff proposal is approved in its present form. If the staff is sponsoring rate increases of this magnitude, consumers are entitled to have the staff explain and review the information supporting its analysis. To date, the staff has not put forth any information to support the pricing rules in its plan.

5. The Attorney General has repeatedly requested that the PSC appoint a working group to negotiate the specific language of the regulatory plan. A negotiated regulatory agreement would resolve many of the unanswered questions about the Revised ATRP. When the participants met on August 24, 2004, the Administrative Law Judge specifically rejected the Attorney General's request for a working group to edit the language of the agreement. In fact, the only request specifically rejected at the workshop was the request to have a working group edit the ATRP.

6. The Revised ATRP continues to permit companies and the Commission to make decisions without including consumers in the process. For example, the Revised ATRP permits the Commission and the Company to identify additional criteria, for defining levels of competitive activity determining a wire center's assignment to a particular tier. Revised ATRP, Appendix A, ¶ 3. Consumers are not included in or permitted to participate in the process even though the prices consumers pay for telecommunications services are dependant upon a wire center's assignment to a

particular tier group. A footnote further provides that "[a]ll non-MSA wire centers will be assigned to Tier II upon demonstration by the ILEC to the Commission's satisfaction that fifty (50) percent of[sic] more of the ILEC's non-MSA wire centers are experiencing intra-modal ...competition..." Id., at n.3. Again, the staff proposes mandatory language for determining tier assignments and only the Company and the Commission participate in the analysis. Furthermore, it is unclear when and how an ILEC will demonstrate competitiveness to the Commission's satisfaction. Will there be a hearing? Does the use of the mandatory term, will, remove the Commission's discretion in this matter? Again, a working group to edit the Revised ATRP could resolve some of the ambiguities of the regulatory agreement.

7. The Revised ATRP provides that the Commission will not direct intrastate access reductions unless the revenue provided by switched access is replaced by an end-user charge, an increase in local service rates, or an intrastate USF. Revised ATRP, Appendix A, ¶ 7C(2). Only two of the revenue replacement mechanisms require notice and a hearing. The staff proposal does not require notice and a hearing, when the revenue replacement occurs by an increase in local service rates, even when the increase is in addition to rate increase provided in other sections of the pricing rules. The Attorney General requests that the PSC revise this provision of the staff proposal and require notice and a hearing for all of the revenue replacement mechanisms.

8. Certain consumers have suggested to the Attorney General that paragraph 11 of the Revised ATRP be amended to change the time for cancellation of a service due to increased prices. Consumers do not know when a tariff is effective. Consequently, it would be more appropriate, if the thirty-day period for cancellation of a service due to

increased prices ran from the date of the first billing rather than the effective date of the tariff.

9. The Attorney General respectfully requests that the Commission revise paragraph 14 of the Revised ATRP, Commission Oversight, to incorporate all of the provisions of paragraph 17, Commission Regulation and Oversight, of the 1995 Local Competition Order. The significant difference between the two oversight paragraphs is that the staff proposal in the Revised ATRP eliminates the Commission's involvement in the prices consumers pay for telecommunications services. Interestingly, the staff continues to require that companies provide financial cost data, data that would be important under rate of return regulation, but eliminates any language on price regulation.

10. The Revised ATRP contains a provision stating that the PSC will hold a hearing before it exercises any statutory provisions inconsistent with the ATRP. Revised ATRP, Attachment A, ¶ 14A. On behalf of Alabama consumers, the Attorney General respectfully requests that the PSC explain and clarify its authority to approve a regulatory agreement that is inconsistent with Title 37 of the Alabama Code.

11. The Attorney General respectfully requests that the Commission review of the Revised ATRP on the third anniversary be mandatory and not discretionary. Perhaps, the first review could be discretionary and the second review mandatory. The review will be more beneficial to consumers, if we have an opportunity to collect information for a few years.

12. The Attorney General supports flexible pricing for BellSouth subject to regulatory limitations. The Revised ATRP is in some respects more restrictive for BellSouth than the regulatory agreement negotiated between BellSouth and the Attorney

General. In spite of the regulatory restrictions, consumers may be subject to significant rate increases under this plan, particularly, if the staff and the Commission take the position that price increases within the rate limitations are presumptively valid. It is entirely possible that rates under the Revised ATRP will be set according to the staff's proposed rate limitations and will not reflect the competitiveness of the market in the different tiers. If this is the result, the Revised ATRP will not benefit consumers in the competitive areas of the state. Moreover, consumers in Tier II and Tier III areas may also have to pay increased rates in areas where there is little or no competition.

13. The Attorney General continues to support the agreement negotiated with BellSouth and filed with this Commission on January 27, 2004. That agreement allows BellSouth significant pricing flexibility and provides consumers protection against increased prices because the Commission is available to resolve price disputes. In the Revised ATRP, the staff has eliminated the Commission's explicit focus on the prices charged to customers. If the PSC is not actively involved in the prices charged to customers, a significant protection of the 1995 Local Competition Order is lost and the Revised ATRP is a step backward, both for BellSouth and Alabama consumers.

ILEC PRICE CAP PLAN

14. The Attorney General supports the staff revisions to the ILEC Price Cap Plan in the Revised ATRP. The Attorney General respectfully requests that the Commission amend this portion of the ATRP to include the revisions proposed in paragraphs 7-11 of the Attorney General's comments on the BellSouth Price Flexibility Plan.

15. The Attorney General further requests that the paragraph on contract service arrangements includes the requirement that the companies negotiate a

comprehensive proprietary agreement with the Attorney General similar to the requirement imposed on BellSouth.

ILEC PRICE FLEXIBILITY PLAN

16. The Attorney General does not support this part of the Revised ATRP. The requirements for participating in this plan do not require a significant showing of competitiveness in the ILEC's market before participating in the plan.

CLEC PRICE FLEXIBILITY PLAN

17. The Attorney General supports this portion of the Revised ATRP. The Attorney General respectfully requests that paragraph 8 of the CLEC plan be revised to accommodate the concerns expressed in paragraph 8 of these comments on the cancellation of services due to increased rates.

TOLL SERVICE PROVIDER STREAMLINES REGULATION PLAN

18. The Attorney General supports this portion of the Revised ATRP. The Attorney General respectfully requests that paragraph 4 of the Toll Service plan be revised to accommodate the concerns expressed in paragraph 8 of these comments on the cancellation of services due to increased rates.

CONCLUSION

The Attorney General, on behalf of Alabama consumers, respectfully requests

that the Commission amend the Revised ATRP to include the consumer protections addressed in these comments and approve the ATRP at the next Commission meeting.

Respectfully submitted,

TROY KING
ATTORNEY GENERAL

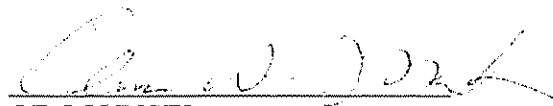


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ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

We have not served any copies of this Comment but will provide copies upon request.

Dated this 22nd day of November 2004.



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